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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

MARY ANN SUSSEX; MITCHELL PAE;  
 MALCOLM NICHOLL and SANDY  
 SCALISE; ERNESTO VALDEZ, SR. and  
 ERNESTO VALDEZ, JR; JOHN  
 HANSON and ELIZABETH HANSON,

Plaintiffs,

v.

TURNBERRY/MGM GRAND TOWERS,  
 LLC, a Nevada LLC; MGM GRAND  
 CONDOMINIUMS LLC, a Nevada LLC;  
 THE SIGNATURE CONDOMINIUMS,  
 LLC, a Nevada LLC; MGM MIRAGE, a  
 Delaware Corporation; TURNBERRY/  
 HARMON AVE., LLC, a Nevada LLC;  
 and TURNBERRY WEST REALTY, INC.,  
 a Nevada Corporation,

Defendants.

Case No. 2:08-cv-00773-RLH-PAL

**OPPOSITION TO MOTION TO  
 RELATE CASES AND TRANSFER  
 SECOND-FILED CASE TO FIRST-  
 FILED CASE**

1 Defendants Turnberry/MGM Grand Towers, LLC, MGM Grand  
 2 Condominiums LLC, Inc., The Signature Condominiums, LLC, MGM Mirage,  
 3 Turnberry/Harmon Ave., LLC, and Turnberry West Realty, Inc. (collectively  
 4 "Defendants"), hereby oppose Plaintiffs' motion to relate cases and transfer the  
 5 action entitled *George Abraham, et al v. Turnberry/MGM Grand, et al*, Case No:  
 6 2:11-cv-01007-JCM-RJJ ("*Abraham*") to this Court.

## 7 I. INTRODUCTION

8 The Court should deny plaintiffs' motion to transfer to this Court the  
 9 *Abraham* case filed earlier this year. There is no "related" case pending in this  
 10 Court. The *Sussex* case, with which Abraham's lawyers wish to "consolidate" this  
 11 case, is in arbitration, where the *Abraham* case belongs. An order "relating" these  
 12 cases would accomplish the opposite of what LR 7-2.1 contemplates: Transfer  
 13 would be a waste of time, the parties' money, and judicial resources. Defendants'  
 14 motion to compel arbitration in *Abraham* is pending before Judge Mahan who is  
 15 perfectly capable of taking judicial notice of this Court's June 16, 2009 order  
 16 compelling the *Sussex* case to arbitration and ordering the *Abraham* plaintiffs to do  
 17 likewise. The instant motion should be seen for what it is — a tactic by the  
 18 *Abraham* plaintiffs' lawyers (who are the *Sussex* lawyers too) to further delay and  
 19 avoid their clients' agreement to arbitrate their Signature claims. The motion  
 20 should be denied.

## 21 II. ARGUMENT

22 There is no dispute between the parties that the *Sussex* action and the  
 23 *Abraham* action involve the same defendants and similarly situated plaintiffs  
 24 making the same or substantially similar claims regarding their purchases at the  
 25 Signature at MGM Grand, a condominium-hotel project more than five years ago.  
 26 That, however, is insufficient under Local Rule 7-2.1 to mandate finding these  
 27 cases related and transferring them to this Court. Under LR 7-2.1, "[a]n action *may*

28

1 be considered to be related to another action" (emphasis added) when it satisfies  
 2 one or more of the criteria outlined in LR 7-2.1 a-d. Mot. at 2. Even if the Court  
 3 finds that these actions are related, there is no language in the rule that compels  
 4 relation and transfer of similar cases — the rule is discretionary. It is without  
 5 question that the thrust of this rule is to, "effect a substantial savings of judicial  
 6 effort," LR 7-2.1(c), to avoid the "substantial duplication of labor," *id.* 7-2.1(d) or to  
 7 make a determination of the consolidation of the actions." *Id.*<sup>1</sup> None of these  
 8 considerations are relevant to these cases because the parties in both *Sussex* and  
 9 *Abraham* agreed to arbitrate their claims against Defendants.

10 In point of fact, the only consideration for the *Abraham* Court is to  
 11 determine whether the *Abraham* plaintiffs entered into the same arbitration  
 12 agreement as the one held valid and enforceable by the Nevada Supreme Court in  
 13 the related *KJH & RDA Investor Group, LLC et al. v. Turnberry/MGM Grand Towers,*  
 14 *LLC* ("*KJH*"). If they did, they must be sent to arbitration.<sup>2</sup> Defendants have  
 15 already requested Judge Mahan take judicial notice of the *KJH* order and this  
 16 Court's June 16, 2009, order compelling the *Sussex* plaintiffs to arbitrate. The most  
 17 efficient means to this end is to deny the instant motion and allow Judge Mahan  
 18 to consider the motion to compel arbitration that is pending before him in the  
 19 *Abraham* action. There is simply no economy in transferring the case from one  
 20 judge to another to decide this motion. The same work must be completed by  
 21 either court.

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22  
 23 <sup>1</sup> See also Fed. R. Civ. P. 42(a)(3), "If actions before the court involve a  
 24 common question of law or fact, the court *may*: . . . (3) issue any other order to  
 25 avoid cost or delay." (emphasis added). Again, consolidation of actions is  
 26 discretionary to save the court's valuable resources. No such savings would  
 result from a transfer of the *Abraham* action.

27 <sup>2</sup> This Court's June 16, 2009, order compelling the *Sussex* plaintiffs to  
 28 arbitration was based on the Nevada Supreme Court's decision in *KJH*. See Dkt.  
 59.

1           There is no other benefit to relate the two actions and transfer the  
2 *Abraham* action to this Court. *Sussex* is pending in arbitration before the American  
3 Arbitration Association. This motion is nothing more than another of many  
4 attempts by lawyers for the *Abraham* plaintiffs to buy more judicial time and  
5 avoid their agreement to arbitrate claims related to the Signature project. The  
6 motion should be denied.

7 **III. CONCLUSION**

8           For the reasons stated above, the Court should not relate or transfer  
9 the subject action to this court and the instant motion should be denied.

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada

Electronic Filing Procedures, I certify that I am an employee of MORRIS

PETERSON, and that the following documents were served via electronic service:

**OPPOSITION TO MOTION TO RELATE CASES AND TRANSFER SECOND-  
FILED CASE TO FIRST- FILED CASE**

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DATED this 28<sup>th</sup> day of November, 2011.

By: forrest galls